

REMARKS

In response to the February 25, 2003 Election of Species Requirement, Applicant hereby provisionally elects to prosecute the claims of Species (ii). Claims 2, (4 to 11)/2 (i.e., as these claims depend from Claim 2), 13 and 15/13 read on the elected species.

Traversal is on the grounds that the Office Action does not identify any separate species of the invention, but rather relies on claim language to manufacture them. MPEP § 806.04(e) specifically prohibits this practice in the context of an election between species:

"Claims are definitions of inventions. Claims are never species." (Emphasis in original.)

To emphasize this point, MPEP § 806.04(e) further admonishes that "[s]pecies are always the specifically different embodiments" (emphasis in original).

Here, the Office Action did not identify any embodiments. Indeed, exactly two detailed embodiments are disclosed, and it is therefore arithmetically impossible for two embodiments to support a three-way election between species. Rather, in contravention of MPEP guidelines, the Office Action relied on claim language to define species.

Moreover, traversal is on the grounds that there would not be undue burden in examining the claims of all three species in a single application. It has always been Applicant's prerogative to present claims to a reasonable number of species, as the term "reasonable" is used in 37 C.F.R. § 1.141(a). In this case, only three species have been

identified by the Examiner, all of which involve control over negative pressure in an ink jet recording apparatus.

Applicant therefore submits that the maintenance and examination of all claims in the same application is reasonable and is not believed to be unduly burdensome on the Examiner. Accordingly, reconsideration and withdrawal of the Election Of Species Requirement is respectfully requested.

An Information Disclosure Statement is being filed concurrently herewith. Consideration of the art cited therein is respectfully requested.

Applicant's undersigned attorney may be reached in our Costa Mesa, California office at (714) 540-8700. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,


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